

UNITED STATES DISTRICT COURT  
Western District of Texas  
SAN ANTONIO DIVISION


UNITED STATES OF AMERICA

v.

Case Number SA-04-CR-681(1)-OLG  
USM Number 49424180

JOSHUA PHILLIP ABELL

Defendant.

**FILED**  
**OCT 17 2006**  
CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY  DEPUTY CLERK

**JUDGMENT IN A CRIMINAL CASE**  
(For Offenses Committed On or After November 1, 1987)

The defendant, JOSHUA PHILLIP ABELL, was represented by Mr. Robert J. Barrera.

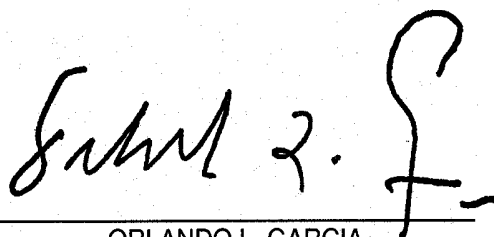
The defendant pled guilty to Count(s) One, and Two of the Information on February 28, 2005. Accordingly, the defendant is adjudged guilty of such Count(s), involving the following offense(s):

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count (s)</u>
18 U.S.C. 371, 18 U.S.C. 2319(b)(1) & 17 U.S.C. 506(a)(1)	Conspiracy to Commit Copyright Infringement	April 2004	One
17 U.S.C. 506(a)(1) & 18 U.S.C. 2319(b)(1)	Criminal Infringement of a Copyright	April 2004	Two

As pronounced on September 7, 2006, the defendant is sentenced as provided in pages 2 through 7 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid. If ordered to pay restitution, the defendant shall notify the Court and United States Attorney of any material change in the defendant's economic circumstances.

Signed this the 17th day of October, 2006.



ORLANDO L. GARCIA  
United States District Judge

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Defendant: JOSHUA PHILLIP ABELL  
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**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 15 months on each of Counts One, and Two to be served concurrently.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons at or before 2:00 PM when notified to report by the United States Pretrial Services. However, the defendant shall not be required to report prior to January 20, 2007.

**RETURN**

I have executed this Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this Judgment.

\_\_\_\_\_  
United States Marshal

By \_\_\_\_\_  
Deputy Marshal

Defendant: JOSHUA PHILLIP ABELL  
Case Number: SA-04-CR-681(1)-OLG

### **SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of 2 years on each of Counts One, and Two to be served concurrently.

While on supervised release, the defendant shall comply with the mandatory, standard and if applicable, the special conditions that have been adopted by this Court as set forth on pages 4 and 5 of this judgment; and shall comply with the following additional conditions:

1. The defendant shall provide the probation officer access to any requested financial information and provide any requested personal and/or business telephone records, Internet Service Provider (ISP) accounts (including user-names and passwords), and proof of disconnection or termination of internet services.
2. The defendant shall not possess or use a computer with access to the internet unless permitted by the probation officer. This includes possessing or using any computer with a modem.
3. The defendant shall permit the probation officer to conduct periodic unannounced inspections of his computer equipment which may include retrieval and copying of all data from the defendant's computers. This also includes the removal of such equipment, if necessary, for the purpose of conducting a more thorough inspection.
4. The defendant shall consent, at the direction of the probation officer, to having installed on any computer the defendant uses, at the defendant's expense, hardware or software to monitor the defendant's computer use. The defendant shall permit the placement on the computer a notice to warn others of the existence of monitoring software.
5. The defendant shall not possess or use a computer except with the prior approval of the probation officer for authorized employment purposes only.
6. The defendant shall permit the probation officer to inform any third parties regarding the imposed computer-related restrictions.
7. The defendant shall maintain a daily log of all addresses accessed via any computer, other than for authorized employment, and submit this log to the probation officer upon request.
8. The defendant shall permit the probation officer to conduct a warrantless search of his entire residential premises, computer system, internet access devices and/or vehicle to insure compliance with all these conditions.
9. The defendant is prohibited from using any software program or device designed to hide, alter, or delete records/logs of the defendant's computer use, internet activities, or the files stored on the defendant's assigned computers. This includes the use of encryption, steganography, and cache/cookie removal software.

10. The defendant is prohibited from installing new hardware or having his computer repaired without receiving prior permission from the probation officer.
11. The defendant shall refrain from using a computer in any manner that relates to the activity in which the defendant was engaged in committing the instant offense or violation behavior, namely copyright infringement and participation in "warez groups."
12. The defendant will have an occupational condition that he cannot be employed directly or indirectly where he is an installer, programmer, or "trouble shooter".
13. The defendant shall disclose all online accounts including user-names and passwords to the probation officer upon request. You shall also provide telephone/internet service provider billing records monthly as well as proof of the disconnection or termination of such services, if required by Court.
14. The defendant shall provide the probation officer access to any requested financial information.

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**CONDITIONS OF SUPERVISION****Mandatory Conditions:**

- 1) The defendant shall not commit another federal, state, or local crime.
- 2) The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
- 3) In supervised release cases only, the defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from custody of the Bureau of Prisons.
- 4) If convicted of a felony, the defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.
- 5) The defendant shall cooperate in the collection of DNA as directed by the probation officer if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. § 1413a).
- 6) If convicted of a sexual offense as described in 18 U.S.C. § 4042(c)(4), the defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer.
- 7) If convicted of a domestic violence crime as defined in 18 U.S.C. § 3561(b), the defendant shall participate in an approved program for domestic violence.
- 8) If the judgment imposes a fine or restitution, it is a condition of supervision that the defendant pay in accordance with the Schedule of Payments sheet of the judgment.

**Standard Conditions:**

- 1) The defendant shall not leave the judicial district without permission of the court or probation officer.
- 2) The defendant shall report to the Probation Officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the Probation Officer and follow the instructions of the Probation Officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the Probation Officer for schooling, training or other acceptable reasons.
- 6) The defendant shall notify the Probation Officer at least ten days prior to any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substance, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the Probation Officer.
- 10) The defendant shall permit a Probation Officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the Probation Officer.
- 11) The defendant shall notify the Probation Officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or special agent of a law enforcement agency without the permission of the Court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

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- 14) If convicted of a sexual offense as described in 18 U.S.C. § 4042(c)(4), or has a prior conviction of a State or local offense that would have been an offense as described in 18 U.S.C. § 4042 (c)(4) if a circumstance giving rise to Federal jurisdiction had existed, the defendant shall participate in a sex offender treatment program approved by the probation officer. The defendant shall abide by all program rules, requirements and conditions of the sex offender treatment program, including submission to polygraph testing, to determine if the defendant is in compliance with the conditions of release. The defendant may be required to contribute to the cost of the services rendered (copayment) in an amount to be determined by the probation officer, based on the defendant's ability to pay.
- 15) The defendant shall submit to an evaluation for substance abuse or dependency treatment as directed by the probation officer, and if deemed necessary by the probation officer, the defendant shall participate in a program approved by the probation officer for treatment of narcotic addiction or drug or alcohol dependency which may include testing and examination to determine if the defendant has reverted to the use of drugs or alcohol. The defendant may be required to contribute to the cost of the services rendered (copayment) in an amount to be determined by the probation officer, based upon the defendant's ability to pay.
- 16) The defendant shall submit to an evaluation for mental health counseling as directed by the probation officer, and if deemed necessary by the probation officer, the defendant shall participate in a mental health program approved by the probation officer. The defendant may be required to contribute to the cost of the services rendered (copayment) in an amount to be determined by the probation officer, based upon the defendant's ability to pay.
- 17) If the defendant is excluded, deported, or removed upon release from imprisonment, the term of supervised release shall be a non-reporting term of supervised release. The defendant shall not illegally re-enter the United States. If the defendant lawfully re-enters the United States during the term of supervised release, the defendant shall immediately report in person to the nearest U.S. Probation Office.
- 18) If the judgment imposes other criminal monetary penalties, it is a condition of supervision that the defendant pay such penalties in accordance with the Schedule of Payments sheet of the judgment.
- 19) If the judgment imposes a fine, special assessment, restitution, or other criminal monetary penalties, it is a condition of supervision that the defendant shall provide the probation officer access to any requested financial information.
- 20) If the judgment imposes a fine, special assessment, restitution, or other criminal monetary penalties, it is a condition of supervision that the defendant shall not incur any new credit charges or open additional lines of credit without the approval of the probation officer unless the defendant is in compliance with the payment schedule.

The Court further adopts such of the following special conditions applied to the supervised person by the judge at the time of sentencing:

- 1) **COMMUNITY CONFINEMENT:** The defendant shall reside in a Community Corrections Center for a period of \_\_\_\_\_ months to commence on \_\_\_\_\_. Further, once employed, the defendant shall pay 25% of his/her weekly gross income for his/her subsistence as long as that amount does not exceed the daily contract rate.
- 2) **HOME DETENTION:** The defendant shall participate in the Home Confinement Program for a period of \_\_\_\_\_ days/months. During this time the defendant shall remain at his/her place of residence except for employment and other activities approved in advance by the probation officer. The defendant shall maintain a telephone at his/her place of residence without "call forwarding," a "modem," "caller ID," "call waiting," or portable cordless telephones for the above period. At the direction of the probation officer, the defendant shall wear an electronic monitoring device and follow electronic monitoring procedures specified by the probation officer. The court further orders that the defendant shall pay for the costs of Home Confinement, as directed by the probation officer.
- 3) **COMMUNITY SERVICE:** The defendant shall perform 400 hours of community service work without pay, as a chemistry tutor, or tutor in some other science, preferable at an inner city high school, at a location approved by the probation officer, to be completed by the end of the supervision term.



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**CRIMINAL MONETARY PENALTIES/ SCHEDULE**

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth. Unless the Court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. Criminal Monetary Penalties, except those payments made through Federal Bureau of Prisons' Inmate Financial Responsibility Program shall be paid through the Clerk, United States District Court, 655 East Durango Boulevard, Room G-65, San Antonio, Texas 78206.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

	<b><u>Assessment</u></b>	<b><u>Fine</u></b>	<b><u>Restitution</u></b>
TOTAL:	\$200.00	\$0	\$Undetermined

**Special Assessment**

It is ordered that the defendant shall pay to the United States a special assessment of \$200.00. Payment of this sum shall begin immediately.

**Fine**

The fine is waived because of the defendant's inability to pay.

**Restitution**

For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because determining complex issues of fact and relating them to the cause or amount of the victims' losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim would be outweighed by the burden on the sentencing process under 18 U.S.C. § 3663A(c)(3)(B).

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column above. However, pursuant to 18 U.S.C. § 3664(i), all non-federal victims must be paid before the United States is paid.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. §3614.

The defendant shall pay interest on any fine or restitution of more than \$2,500.00, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. §3612(f). All payment options may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. §3612(g).

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.